IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No . 2996 of 1996(O&M)

DATE OF DECISION : 13-9-2006

National Insurance Co.Ltd,Chandigarh. … APPELLANT.

Sammi Bai & others … RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. R.M.Suri, Advocate,
for the appellants

Mr.P.S.Jammu, Advocate,
and Mr. I.S.Brar, Advocate
for the respondents-claimants.

…

JUDGMENT:

This appeal is by the insurance company against award dated 21.8.1996 passed by the Motor Accident Claims Tribunal, Sirsa, whereby on the basis of compromise/settlement arrived at between the parties, it has been ordered to pay compensation of Rs.80,000/- to the claimants within two months failing which the claimants will get interest on the said amount at the rate of 12 per cent per annum from the date of compromise i.e. 26.4.1995 till recovery of the amount. Out of the afore-stated amount, a sum of Rs.20,000/- has been ordered to be paid to claimant Sammi Bai in cash while the remaining amount of Rs.60,000/- has been ordered to be deposited in fixed deposit in some nationalised bank fetching maximum interest and the interest so accruable on the said deposit is to be given periodically to Sammi Bai claimant towards her maintenance.

Briefly, the facts of the case are that on 6.7.1994, deceased Sukh Ram was going on his cycle from the side of Bamboo

Chowk in village Mangla when a truck bearing registration No.PAR-9490 driven by Kashmir Singh came and hit Sukh Ram resulting in his death. Thereafter, an FIR was got registered in this regard at P.S.Sadar, Sirsa. A claim petition was then filed by the legal heirs of Sukh Ram, claiming compensation on account of his death.

Upon notice of the claim petition, written statement was filed by the appellant-respondent, insurance company, contending that the deceased himself was rash and negligent in driving his cycle. It took up the plea that the driver of the offending truck, Kashmir Singh, did not possess a valid driving licence and as such, it is not liable to pay any compensation.

During the pendency of the claim petition, i.e. on 26.4.1995 the case was taken up by the Lok Adalat where it was agreed between the parties to settle the claim for an amount of Rs.80,000/- if the said amount was not paid within two months from the date of award, claimants were held entitled to get interest at the rate of 12 per cent per annum from the date of award onwards till realization. This was, however, subject to verification of driving licence within three months only. However, on 29.7.1995, the insurance company moved an application stating that the driving licence of Kashmir Singh has been found to be fake and so, they were not ready to accept the conditional compromise. Thereafter, the insurance company sought as many as three opportunities to verify the genuineness of the driving licence but despite the grant of such opportunities, the insurance company failed to do so. Accordingly, the Tribunal in view of the afore-stated compromise, vide the impugned award holding the driving licence of Kashmir Singh to be valid one, directed the insurance company to pay compensation of Rs.80,000/- within two months. The insurance company has now impugned the award by way of instant appeal.

I have heard the counsel for the parties.

In the instant case, no doubt the insurance company had moved an application on 29.7.1995 within the stipulated period of three months so granted for verification of the driving licence but the record shows that no cogent evidence had been led to substantiate the plea so taken in the application. On the contrary, a bare perusal of order dated 21.8.1996 reveals that the learned Tribunal had noticed report dated 20.8.1996 of Risal

Singh, Surveyor, mentioning that the driving licence of Kashmir Singh was renewed by the Licensing Authority, Bathinda, on 22.9.1994 and originally, it was issued by Licensing Authority, Kota (Rajasthan). Another report dated 26.5.1995 of surveyor, Satish Kumar Bansal, showed that Bathinda Authorities had issued registered notice to Licensing Authority, Kota before renewal of the licence of Kashmir Singh and on that basis, came to the following conclusion:-

> " Hence, I am of the considered opinion that on the date of accident, the respondent No.1 was having a valid driving licence."

Subsequently, in the same order, it was also opined that from reports dated 20.8.1996 and 26.5.1995 of the Surveyors from the insurance company itself, the driving licence of Kashmir Singh has been found to be genuine. There is no dispute with the proposition of law that onus is on the insurance company to prove that the driver of the truck was not holding a valid driving licence by leading cogent evidence. However, in the instant case, as indicated above, the insurance company failed to discharge the said burden despite the grant of numerous opportunities; rather the reports of the Surveyors showed that the driving licence of Kashmir Singh was found to be genuine.

In view of the discussion above, there is no infirmity in the impugned award. The appeal is accordingly dismissed. No costs.

September 13, 2006 (ARVIND KUMAR)
JS JUDGE